No. 83-859

IN THE

Supreme Court of the United States

October Term, 1983

THE PEOPLE OF
THE STATE OF CALIFORNIA,
Petitioner,

v.

CHARLES R. CARNEY,
Respondent.

ON WRIT OF CERTIORARI TO
THE CALIFORNIA SUPREME COURT

BRIEF OF THE STATE OF MINNESOTA AND THE STATES OF FLORIDA AND HAWAII AS AMICI CURIAE IN SUPPORT OF PETITIONER THE PEOPLE OF THE STATE OF CALIFORNIA

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INTEREST OF AMICI CURIAE

A decision by the United States Supreme Court to adopt the holding of the California Supreme Court in *People v. Carney*, 34 Cal.3d 597, 668 P.2d 807, 194 Cal. Rptr. 500 (1983) that the vehicle exception does not apply to "motor homes" would have an adverse impact on effective law enforcement in the *amici* states. This brief is submitted on behalf of the *amici* states in an effort to protect the *amici*' interests in effective law enforcement and to urge this Court to reject the California Supreme Court's ill-founded interpretation of the requirements of the fourth amendment of the United States Constitution as they are applied to warrantless searches of vehicles. The *amicus* State of Minnesota is particularly interested in preserving the viability of its own supreme court's recent decision applying the vehicle exception to a motor home.[1]

[1] *See State v. Lepley*, n.9 *infra*.

It is the obligation of the states to protect the general welfare and preserve the safety of their citizens. Through the application of the exclusionary rule, *see Mapp v. Ohio*, 367 U.S. 643 (1961), state law enforcement officers' ability to ferret out crime is directly affected by the decisions of the United States Supreme Court interpreting the meaning of the fourth amendment. Therefore, the *amici* states are compelled to comment on this appeal where a law enforcement officer's right to conduct a warrantless search based on probable cause of a motor home is called into question.

SUMMARY OF ARGUMENT

This brief is submitted in support of the position of the State of California.

The California Supreme Court held in *People v. Carney*, 34 Cal.3d 597, 668 P.2d 807, 194 Cal. Rptr. 500 (1983) that the motor vehicle exception to the warrant requirement does not apply to motor homes. The decision was based on the California court's belief that mobility is no longer the basis for the motor vehicle exception announced by this Court in *Carroll v. United States*, 267 U.S. 132 (1925).

The *amici* contend that mobility is, and should remain, the primary justification for the motor vehicle exception to the warrant requirement. This position is supported by this Court's recent constructions of the *Carroll* doctrine, particularly in *United States v. Ross*, 456 U.S. 798 (1982).

The purpose of the exclusionary rule is to regulate police conduct, and therefore, fourth amendment doctrine must be expressed in rules which can be readily understood and applied by police in the field. The *Carney* court's rejection of the reasonably workable mobility standard in the motor home con-

text will severely hamper effective law enforcement. Further, the *Carney* rule will create a new haven for criminal activity.

For these reasons the California Supreme Court erred in refusing to apply the motor vehicle exception to motor homes, and its decision should be reversed.

ARGUMENT

I. INTRODUCTION.

In *People v. Carney*, 34 Cal.3d 597, 668 P.2d 807, 194 Cal. Rptr. 500 (1983) the California Supreme Court reversed an order of probation for defendant Carney in connection with his plea of *nolo contendere* to the charge of possession of marijuana for sale. The plea had been entered after defendant was unsuccessful in his motions to suppress evidence seized from his motor home. On appeal of the lower court's denial of the suppression motions the *Carney* court examined two proposed justifications for the search of the motor home: the automobile exception and the protective sweep exception. *See Carney*, 34 Cal.3d at 602, 668 P.2d at 808, 194 Cal. Rptr. at 501. Neither of the exceptions profferred by the People was found to apply and regarding the "automobile exception" the court held: "[a]ccordingly, we conclude that a motor home is fully protected by the Fourth Amendment and is not subject to the 'automobile exception.'" *Id.*, 34 Cal.3d at 610, 668 P.2d at 814, 194 Cal. Rptr. at 507. Although the California Supreme Court also rejected the applicability of the protective sweep exception the *amici* will not discuss this issue because the People of California have not raised it before this Court.

The California Supreme Court's decision to refuse to apply the automobile exception to a motor home was grounded on its

belief that the prime justification for the automobile exception was "the diminished expectation of privacy which surrounds the automobile." *Id.*, 34 Cal.3d at 605, 668 P.2d at 811, 194 Cal. Rptr. at 504, (quoting *United States v. Chadwick*, 433 U.S. 1, 12 (1977)). After cataloguing the various domiciliary characteristics present in the motor home the *Carney* court concluded it was more akin to a house than a car and consequently should be treated as such for fourth amendment purposes. The court reasoned, applying the "expectation of privacy" standard, that the fact that the "home" could be driven away was irrelevant on the issue of whether it should be granted the full measure of the fourth amendment's warrant protection. *See id.*, 34 Cal.3d at 609, 668 P.2d at 814, 194 Cal. Rptr. at 507.

It is on the answer to this fundamental question concerning the essential justification for warrantless searches of any mobile vehicle that *amici* disagree with the *Carney* decision. In both its holding and its reasoning the court below diverged from the consistent rulings of this Court that it is the mobility of vehicles which cause them to be accorded different treatment with respect to the warrant requirement. The remainder of the brief will be devoted to elucidating the *amici* position that public and judicial policy dictate that this Court continue to support "mobility" as the primary justification for warrantless searches of vehicles based on probable cause.

II. MOBILITY HAS BEEN, IS, AND SHOULD REMAIN THE PRIMARY JUSTIFICATION FOR THE VEHICLE EXCEPTION TO THE WARRANT REQUIREMENT.

While acknowledging that the underlying rationale for the distinction between vehicles[2] and houses in *Carroll v. United States*, 267 U.S. 132 (1925), was the inherent mobility of vehicles, the *Carney* court opined that, "mobility is no longer the prime justification for the automobile exception." *Carney*, 34 Cal.3d at 605, 668 P.2d at 811, 194 Cal. Rptr. at 504. The *Carney* court came to this conclusion despite its grudging admission that decisions subsequent to *Carroll* have relied on the mobility justification. *See id.*, 34 Cal.3d at 604, 668 P.2d at 810, 194 Cal. Rptr. at 503. The *amici* submit that this Court's continued reference to mobility as the underpinning of the vehicle exception is not mere lip service as at least one commentator has suggested.[3] Instead, the mobility justification remains this Court's animus for the different treatment accorded to the vehicle setting.

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[2] The *Carney* decision, as do most courts and commentators, refers to the doctrine originated in *Carroll v. United States*, 267 U.S. 132 (1925), as the "automobile exception". Obviously, the cardinal objective of this brief is to convince the Court that the *Carroll* doctrine extends beyond automobiles. The *amici* believe that the shorthand "automobile exception" nomenclature is an inaccurate restatement both of the holding of *Carroll* and of the doctrine as it has since developed. Therefore, the *amici* will take Chief Justice Taft at his word when he said the *Carroll* decision applied to, "an automobile *or other vehicle*," *id.* at 149 (emphasis added), and refer throughout the brief to the doctrine first enunciated in *Carroll* as the "vehicle exception."

[3] *See* Katz, *Automobile Searches and Diminished Expectations in the Warrant Clause*, 19 Am. Crim. L. Rev. 557, 570 n.72 (1982).

A. The *Carroll* Doctrine Has Always Been Premised On Mobility.

This Court's most recent exhaustive review of the *Carroll* doctrine in *United States v. Ross*, 456 U.S. 798 (1982), explained that the *Carroll* rule is based on a vehicle's quality of mobility;[4] a characteristic which remains constitutionally significant whether or not the vehicle is in immediate danger of being moved at the time a search is conducted.[5] The *Ross* opinion can be described as not only a review but also a re-examination and reaffirmation of the *Carroll* Court's constitutional analysis. In particular *Ross* recapitulates *Carroll's* finding that, "historically warrantless searches of vessels, wagons, and carriages—as opposed to fixed premises such as a home or other building—had been considered reasonable by Congress." *Ross*, 456 U.S. at 805. Further, *Ross* explained that *Carroll's* rationale was based on the observation that,

> [S]ince its earliest days Congress had recognized the impracticability of securing a warrant in cases involving the transportation of contraband goods. In light of this

[4] The *Ross* Court quoted from *Carroll's* finding that:

> the guaranty of freedom from unreasonable searches and seizures by the Fourth Amendment has been construed, practically since the beginning of the Government, as recognizing a necessary difference between a search of a store, dwelling house or other structure in respect of which a proper official warrant readily may be obtained, and a search of a ship, motor boat, wagon or automobile, for contraband goods, where it is not practicable to secure a warrant because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought.

Carroll, 267 U.S. at 153.

[5] *See Chambers v. Maroney*, 399 U.S. 42, 52 (1970). "The probable-cause factor still obtained at the station house *and so did the mobility of the car. . . .*" (Emphasis added).

> established history, individuals always had been on notice that movable vessels may be stopped and searched on facts giving rise to probable cause that the vehicle contains contraband, without the protection afforded by a magistrate's prior evaluation of those facts.

Id. at 806 & n.8.

The line of decisions refusing to apply the mobility justification to "movable" *containers* in a vehicle,[6] however, is not inconsistent, as *Carney* seems to suggest, with the proposition that mobility is the primary justification for the vehicle exception. These decisions illustrate, *see generally*, *Ross supra*, that an owner's expectation of privacy in a movable container's contents should be less protected merely because of the container's presence in the vehicle setting which is distinguished only by its capacity for movement.

As *Ross* has made clear, the *Carroll* exception is "unquestionably one that is 'specifically established and well-delineated.'" *Id.* at 825 (quoting *Carroll*). The *Carroll* exception to the warrant requirement is based on the setting in which

[6] *See e.g., Arkansas v. Sanders*, 442 U.S. 753 (1979); *United States v. Chadwick*, 433 U.S. 1 (1977).

the search takes place.[7] The distinguishing factor in the vehicular setting is mobility. In order to preserve the "well-delineated" character of the *Carroll* exception it is essential that this Court reiterate that mobility remains the primary justification for treating the vehicle setting differently.

B. Courts Have Continually Applied The *Carroll* Doctrine To Warrantless Searches Of Vehicles Other Than Automobiles.

The *Carney* court's conclusion that mobility is no longer the basis of the vehicle exception not only virtually ignores this Court's decision in *Ross*, but it also cavalierly disregards a host of judicial decisions which applied the exception to

[7] *Ross* says that it is the setting and not the expectation of privacy which determines the fourth amendment protection afforded.

> But the protection afforded by the Amendment varies in different settings. The luggage carried by a traveler entering the country may be searched at random by a customs officer; the luggage may be searched no matter how great the traveler's desire to conceal the contents may be. A container carried at the time of arrest often may be searched without a warrant and even without any specific suspicion concerning its contents. A container that may conceal the object of a search authorized by a warrant may be opened immediately; the individual's interest in privacy must give way to the magistrate's official determination of probable cause.
>
> In the same manner, an individual's expectation of privacy in a vehicle and its contents may not survive if probable cause is given to believe that the vehicle is transporting contraband. Certainly the privacy interests in a car's trunk or glove compartment may be no less than those in a movable container. An individual undoubtedly has a significant interest that the upholstery of his automobile will not be ripped or a hidden compartment within it opened. These interests must yield to the authority of a search, however, which—in light of *Carroll*—does not itself require the prior approval of a magistrate.

Ross, 456 U.S. at 823.

vehicles other than automobiles because the vehicle in question was mobile.

In his noted treatise on search and seizure, Professor LaFave states that, "[a]lthough most of the cases concern the search of automobiles, the principles discussed herein are equally applicable to search of trucks; tractor-trailer rigs; trailers attached to cars; camper-type vans; self-contained mobile homes; boats and airplanes." 2 W.LaFave, *Search and Seizure*, 508-09 n.1 (1978) (citations omitted).[8]

While the lower court found motor homes to be alien to the principles announced by this Court in *Carroll* and its progeny, other courts have had no difficulty applying the *Carroll* doctrine to alternative means of transportation. A 1979 state court decision illustrates the vitality of the mobility justification and its application in a non-automobile context. In *State v. Mower*, 407 A.2d 729 (Me. 1979), the Maine Supreme Court applied the vehicle exception to a school bus which had been converted into a camper. The defendant in *Mower* contended on appeal that the bus, which he used as a home, did not fall within the "automobile" exception. *See id.* at 732. The state supreme court rejected the defendant's argument and explained,

> [h]is theory overlooks the fact that the automobile exception is based on the distinction between mobile vehicles and fixed structures . . . . The converted school bus here

[8] For an update and additional discussion see 2 W.LaFave, *Search and Seizure*, 1984 Pocket Part at 182, n.2. *See also* Note, *Warrantless Vehicle Searches and the Fourth Amendment: The Burger Court Attacks the Exclusionary Rule*, 68 Cornell L. Rev. 105-07, n.16. (Despite the author's general criticism of this Court's approach, he concedes "the term 'automobile exception' is misleading because courts have also applied the exception to searches of other vehicles.")

> is a mobile vehicle. This one-time school bus differs markedly in its mobility from the wheelless "mobile home" which, like a small house, is capable of being transported from place to place but which has been more or less permanently located.

Id. at 732 & n.5 (citation omitted) (emphasis in original).[9]

Carney completely disregards what seemed so plain to the Maine Supreme Court. In the space of its own opinion the *Carney* court has so lost sight of the importance of mobility to the *Carroll* doctrine that it finds itself bemusedly wondering what 'pervasive reason should necessitate treating persons staying in hotels differently from persons traveling in motor homes' under the fourth amendment. *See Carney*, 34 Cal.3d at 608, 668 P.2d at 813, 194 Cal. Rptr. at 506. Obviously, the elementary distinction between the two situations is that the police can expect the hotel room to be where they left it when they went to seek a warrant, while the motor home and any evidence or contraband it contained could have matriculated to the next county.

III. APPLICATION OF THE VEHICLE EXCEPTION TO ALL MOBILE VEHICLES IS ESSENTIAL TO PROVIDE A WORKABLE GUIDELINE AGAINST WHICH POLICE CONDUCT MAY BE MEASURED AND REGULATED.

As has been argued in the preceding section of this brief, the *amici* believe the *Carney* decision is fundamentally unsound in that it misapplies and misunderstands this Court's decisions in *Carroll*, *Chambers* and *Ross*. Yet, an even more serious problem with the *Carney* rule is that it is unworkable in the field and will seriously hamper effective law enforcement.

[9] The *amicus* State of Minnesota recently successfully argued in a pretrial appeal of the suppression of a handgun seized from a motor home that the motor vehicle exception applied to such vehicles. *See State v. Lepley*, 343 N.W.2d 41 (Minn. 1984).

A. Fourth Amendment Doctrine, Designed As It Is To Regulate Police Conduct, Should Consist Of A Series Of Rules Which Can Be Readily Applied By Police In The Field.

The principal vice of the California Supreme Court's decision to remove motor homes from the ambit of the *Carroll* doctrine is that it adds complexity to the already confusing law of search and seizure. Because the purpose of the exclusionary rule sanction is to regulate police conduct this Court should reduce its analysis, wherever possible, "to simple mechanical rules so that the constable has a fighting chance not to blunder." *Robbins v. California*, 453 U.S. 420, 430 (1981) (Powell, J., concurring). As Professor LaFave explains:

> [m]y basic premise is that Fourth Amendment doctrine, given force and effect by the exclusionary rule, is primarily intended to regulate the police in their day-to-day activities and thus ought to be expressed in terms that are readily applicable by the police in the context of the law enforcement activities in which they are necessarily engaged. A highly sophisticated set of rules, qualified by all sorts of ifs, ands, and buts and requiring the drawing of subtle nuances and hairline distinctions, may be the sort of heady stuff upon which the facile minds of lawyers and judges eagerly feed, but they may be "literally impossible of application by the officer in the field."

W.LaFave, *"Case-by-Case Adjudication" Versus "Standardized Procedures:" The Robinson Dilemma*, 1974 Sup. Ct. Rev. 127, 141 (1974) (footnotes omitted) (quoting *United States v. Robinson*, 471 F.2d 1082, 1122 (D.C. Cir. 1972) (Wilkey, J., dissenting) (*rev'd*, 414 U.S. 218 (1973)).

The *Carney* decision, by rejecting the reasonably workable vehicle exception rule falls into the trap of attempting to achieve an analytical purity that cannot exist in the real world of law enforcement.

> [I]f some discipline is not enforced, if some categorization is not done, if the understandable temptation to be responsive to every relevant shading of every relevant variation of every relevant complexity is not restrained, then we shall have a fourth amendment with all of the character and consistency of a Rorschach blot.

A. Amsterdam, *Perspectives on the Fourth Amendment*, 58 Minn. L. Rev. 349, 375 (1974).

B. The California Court's Fourth Amendment Approach To So-Called "Hybrid" Vehicles Is Not Susceptible To Practical Application By Police And Therefore Will Not Properly Regulate Their Conduct.

The *Carney* decision declares that a police officer who has probable cause to search a vehicle must engage in a two-step analysis before proceeding. First, he must determine whether the vehicle he seeks to search is an "automobile" or some "hybrid." Although the taxonomy of vehicles was self-evident to the *Carney* majority it was not so to the lone dissenter.

> First, the majority fails to define its terms. What precisely are "motor homes?" They are almost infinitely variable in size, shape, design, access, and visibility. Some of the smaller ones are the most enclosed. Others are separately attached as trailers, while still others have direct access from the driver's cab. Is a camper or recreational vehicle *r.* "motor home?" What about a large van or truck? As we explained so recently in *Chavers*, "there is a demonstrable need for clear guidelines by which the police can gauge and regulate their conduct, rather than a complex set of rules dependent upon the particular facts . . . ." 33 Cal.3d at p. 469, 189 Cal. Rptr. 169, 658 P.2d 96 [sic]. Although the majority uses the term as if it were readily understood, I find no definition either in statute or dictionary.

Carney, 34 Cal.3d at 614, 668 P.2d at 817, 194 Cal. Rptr. at 510 (Richardson, J. dissenting).

Second, if an officer determines that he is looking at a hybrid vehicle he must next examine the vehicle's outward appearance to determine if it is serving as a permanent or temporary residence. *See id.*, 34 Cal.3d at 609, 668 P.2d at 814, 194 Cal. Rptr. at 507.[10] It is easy to forecast the quandary the *Carney* rule will create for law enforcement personnel attempting to follow its dictates.

The majority quotes with relish the Earl of Chatham's peroration that the King dare not cross the threshold of the ruined tenement, *id.*, 34 Cal.3d at 607, 668 P.2d at 812, 194 Cal. Rptr. at 505, but the *Carney* rule would have no such egali-

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[10] The *Carney* court further complicates the second prong of the analysis for the officer by adding in a footnote, "[o]f course, even if the function of the structure or vehicle is not apparent from its exterior, the protections will come into play at whatever point a reasonable person would realize that the place being searched is serving as a home (e.g., from its furnishings or other residential accoutrements.)" 34 Cal.3d at 609, 668 P.2d at 814, 194 Cal. Rptr. at 507 n.7.

tarian application. Many of the poorest in society are forced to live in automobiles. However, because few of those driven by circumstances into this type of itinerant existence can afford to include the accoutrements of residence, e.g., beds and refrigerators, which *Carney* contends provide an objective indication of residence, they would not benefit from the *Carney* rule. *Id.*, 34 Cal.3d at 606, 668 P.2d at 812, 194 Cal. Rptr. at 505.

The *amici* strongly urge this Court to reject a rule which requires police to make assessments concerning the subjective intent of the owner of a vehicle from its external appearance. Law enforcement personnel can be counted on to determine that a vehicle has wheels and is therefore mobile; but the ability of the police to regulate their conduct becomes increasingly doubtful where the decision to search hinges on darkened versus undarkened windshields, or full beds versus reclining seats.

C. The California Court's Approach Creates Uncertainty That Will Deter Police From Making Legitimate Vehicle Searches And Create A New Haven For Criminal Activity.

The *Carney* ruling will tend to chill effective law enforcement because the police may forego warrantless vehicle searches for fear that any evidence obtained will be excluded on the ground the owner or occupant has a protected privacy interest in the vehicle's interior. Narcotics dealers reading *Carney* would be wise to move their drug labs into motor homes. They could clothe their vehicles in all the trappings of residency, but also use the vehicles' mobility to keep them out of the reach of a search warrant.

Much as the *Carney* court wants to ignore the fact that vehicles are mobile, that characteristic cannot be brushed

aside. The exigent circumstances rule without the vehicle exception is not sufficient to protect society's legitimate law enforcement concerns. *See Carney*, 34 Cal.3d at 610, 668 P.2d at 814, 194 Cal. Rptr. at 507. The majority suggests that under the facts of *Carney* the officer could have strolled over to the courthouse to obtain a warrant, yet Mr. Carney could have just as easily started his vehicle and been twenty miles away when the officer returned.

The majority did not heed Justice Richardson's dissenting admonition.

> We are concerned, here, with matters of degree. I fully agree that definitions are difficult and that those who "reside" or "live" in a motorized vehicle have a heightened expectation of privacy, but broad generalizations are not useful. While protecting the citizens from unreasonable police intrusions, we also should recognize the difficulty facing law enforcement in balancing its obligation to protect the general public from criminal depredation.

Id., 34 Cal.3d at 615, 668 P.2d at 818, 194 Cal. Rptr. at 511 (Richardson, J. dissenting).

CONCLUSION

The *amici* urge this Court to recognize the tremendous burden the *Carney* rule would place on law enforcement and the considerable confusion such a rule would inject into the vehicle search area. The *amici* petition this Court to conclude the process of clarifying the vehicle search doctrine begun in *Chambers* and nearly completed in *Ross* by reversing the decision below and firmly grounding the *Carroll* doctrine in the inherent mobility of vehicles.

Respectfully submitted,

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